IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE T.R. RAMACHANDRAN NAIR

FRIDAY, THE 25TH MAY 2007 / 4TH JYAISHTA 1929

RFA. No. 219 of 2007

OS. 50/2004 of PRINCIPAL SUB COURT, KOCHI
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APPELLANT/ PLAINTIFF:

P.R. KOMALAVALLI, 58 YEARS,
THUNDIYIL HOUSE, OCHANTHURUTHU P.O.
ERNAKULAM DISTRICT.
KOCHI - 682 508.

BY ADV. SMT. SANDHYA RAJU
SMT. RESHMI RAMESH

RESPONDENTS/ DEFENDANTS
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1. **P.R. MANI, AGED 58, PONNANGERIL HOUSE,**
   NEAR PERUMBILI CHURCH, NARAKKAL P.O.

2. **ANIL, 34 YEARS, S/O. LATE P.R. UNNI.**
   PONNANGERIL HOUSE, NEAR PERUMBILI CHURCH,
   NARAKKAL P.O.

3. **MINI, AGED 32, D/O. LATE P.R. UNNI,**
   PONNANGERIL HOUSE, NEAR PERUMBILI CHURCH,
   NARAKKAL P.O.

4. **SEENA SAJEEV, AGED 30, D/O. LATE P.R. UNNI**
   KAITHAVALAPPIL, OPP. PREMIER TYRES,
   NORTH KALAMASSERY.

5. **DHANYA, 23 YEARS, D/O. LATE P.R. UNNI,**
   PONNANGERIL HOUSE, NEAR PERUMBILLY CHURCH,
   NARAKKAL P.O.

THIS REGULAR FIRST APPEAL HAVING COME UP FOR ADMISSION ON 25/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KURIAN JOSEPH & T.R. RAMACHANDRAN NAIR, JJ.

R.F.A. NO. 219 OF 2007

Dated this the 25th day of May, 2007.

J U D G M E N T

Kurian Joseph, J.

This appeal is filed at the instance of the plaintiff in O.S. No. 50/2004 on the file of Sub Court, Kochi. The court below found that the disputed issue regarding partition was the subject matter of the earlier suit O.S. 327/1990 wherein the plaintiff was the party. That suit was filed by the elder sister of the plaintiff. The appellant herein did not claim her share. A relief which was not claimed in an earlier suit for partition, wherein she was a party, cannot be re-agitated in a separate suit for partition as rightly held by the court below.

2. Learned counsel for the appellant submits that the relief was not pursued in the earlier suit, since she could not exercise her free will. That is not a ground for a subsequent suit. Unless the judgment and decree in O.S. 327/1990 which she suffered is modified, varied or annulled in any process known to law,

the appellant cannot put up a new fight in a separate original suit for partition. Thus, there is no merit in this appeal and it is accordingly dismissed.

This appeal is dismissed.

KURIAN JOSEPH
JUDGE

T.R. RAMACHANDRAN NAIR
JUDGE

smp